

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**L.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Moreno Valley, CA, Employer**

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**Docket No. 10-822  
Issued: December 7, 2010**

*Appearances:*

*Thomas Martin, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 1, 2010 appellant, through counsel, filed a timely appeal from a December 1, 2009 decision of the Office of Workers' Compensation Programs concerning the denial of her low back claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established that she sustained a low back condition in the performance of duty, causally related to factors of her federal employment.

**FACTUAL HISTORY**

On January 29, 2008 appellant, then a 59-year-old mail carrier, filed an occupational disease claim alleging that her low back condition with pain radiating into her legs was due to her letter carrying duties including casing and delivering mail. She indicated that she first became aware of this condition on November 30, 2006, but was not aware of its relationship to her employment duties until September 24, 2007.

In support of her claim, appellant submitted an October 22, 2007 report from Dr. John B. Dorsey, a treating Board-certified orthopedic surgeon, who diagnosed anxiety disorder, depression and chronic pain syndrome secondary to degenerative disc disease and lumbar facet disease. A physical examination revealed palpable paralumbar muscle spasms, normal cervical range of motion and reduced lumbosacral range of motion. Dr. Dorsey noted that a review of a magnetic resonance imaging (MRI) scan revealed severe L5-S1 facet hypertrophy, moderate L4-5 hypertrophy and L1-2 disc protrusion. He concluded that appellant was totally disabled due to her chronic pain condition which he attributed to her work activities. In support of this conclusion, Dr. Dorsey stated that appellant sustained an initial injury in May 2003 while changing a tire on a work vehicle,<sup>1</sup> which was followed by continuing trauma from her work duties.

By letter dated March 4, 2008, the Office informed appellant that the evidence of record was insufficient to support her occupational disease claim. It advised her as to the medical and factual evidence to submit and gave 30 days to provide the requested information. No evidence was received.

By decision dated April 8, 2008, the Office denied appellant's claim on the grounds that she failed to establish fact of injury.

In a letter dated April 17, 2008, appellant's counsel requested an oral hearing before an Office hearing representative, which was held on August 27, 2008. At the hearing appellant testified and submitted evidence.

In a July 10, 2008 report, Dr. Dorsey noted appellant's back pain began in 2003 following the changing of a tire on a postal vehicle. He stated that he first examined appellant on October 22, 2007, which was when he diagnosed chronic pain syndrome due to degenerative disc disease and lumbar facet disease. Dr. Dorsey concluded that as a result of this condition appellant was totally disabled from performing her work duties. He also concluded that her lumbar facet and degenerative disc disease had been aggravated by her work duties. The work duties identified by Dr. Dorsey as factors of aggravation included repeated bending, heavy lifting twisting, stooping, reaching, turning, going up inclines, the May 2003 changing the tire on a work vehicle, driving over unpaved roads and getting into and out of a vehicle. Dr. Dorsey noted that appellant had no prior preexisting low back conditions so that her current low back conditions were due to her returning to work on June 18, 2007.

By decision dated November 18, 2008, the Office hearing representative affirmed as modified the denial of appellant's claim. She modified the denial to reflect that appellant failed to submit medical evidence establishing that her back condition was causally related to her employment.

On August 12, 2009 appellant's counsel requested reconsideration and evidence supportive of her request. In a July 16, 2009 report, Dr. Dorsey diagnosed degenerative disc

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<sup>1</sup> Appellant had previously filed two claims for low back conditions which the Office had denied for lack of sufficient medical evidence to establish the causal relationship between appellant's work duties and the injury. Office file numbers xxxxxx353 and xxxxxx459.

disease with facet arthropathy, anxiety and depression. Appellant's back pain began in 2003 following the incident detailed in his prior report. Dr. Dorsey concluded that her degenerative disc disease had been caused in part by the May 2003 work incident and her repetitive work activities of bending, heavy lifting twisting, stooping, reaching, turning, going up inclines, the May 2003 changing the tire on a work vehicle, driving over unpaved roads and getting into and out of a vehicle. He noted that appellant had no prior or preexisting back condition before the May 2003 changing a tire on a work vehicle. As a result of her back pain, appellant stopped work in August 2007 as a result of her disabling back condition. In concluding, Dr. Dorsey opined that appellant's work activities aggravated her lower back condition to the point that she is now totally disabled.

The Office subsequently received additional medical reports from Dr. James J. Park, a treating family practitioner. In a March 7, 2007 report, Dr. Park diagnosed lumbar facet joint syndrome which has caused chronic back pain and lower extremity radiculopathy. He noted that this condition has been present since May 2003 and appellant suffers from constant pain which is aggravated by walking or standing. On July 24, 2007 Dr. Park reported treating appellant for chronic sciatica and spondyloarthropathy.

In a February 15, 2008 report, Dr. Park reported that an October 2007 MRI scan showed mild to moderately severe L5-S1 degenerative facet changes, a narrowing of L1-2 and a milder L1-2 posterior bulging of the annulus. He noted that he first saw appellant in September 2006 at which time he diagnosed lumbar facet joint pain. In concluding, Dr. Park opined that appellant was disabled from performing her usual duties as a postal carrier due her pain.

By decision December 1, 2009, the Office denied modification. It noted that the Office accepted fact of injury but denied the claim due to insufficient medical evidence of causal relationship between the injury and her employment factors.

### **LEGAL PRECEDENT**

An occupational disease or illness means a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection, continued or repeated stress or strain or other continued or repeated conditions or factors of the work environment.<sup>2</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) medical evidence establishing the presence or existence of a condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition; and (3) medical evidence establishing that the employment factors identified by the employee were the proximate cause of the condition or illness, for which compensation is claimed or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>3</sup>

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<sup>2</sup> Donald W. Wenzel, 56 ECAB 390 (2005); William Taylor, 50 ECAB 234 (1999); see also 20 C.F.R. § 10.5(q).

<sup>3</sup> D.D., 57 ECAB 734 (2006); Donna L. Mims, 53 ECAB 730 (2002).

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>4</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between an employee's diagnosed conditions and the implicated employment factors.<sup>5</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed conditions and the specific employment factors identified by the employee.<sup>6</sup>

### ANALYSIS

The Office denied appellant's claim on the grounds that the medical evidence of record was insufficient to establish a causal relationship between her back condition and the employment factors she identified. The issue on appeal is whether the medical evidence of record is sufficient to establish that her back condition was caused or aggravated by her employment.

The Board finds that the medical evidence of record generally supports that appellant sustained a work-related injury.

Although an employee who claims benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his claim, it is well established that proceedings under the Act are not adversarial in nature and, while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>7</sup>

In his reports dated July 10 and November 18, 2008 and August 12, 2009, Dr. Dorsey diagnosed degenerative disc disease with facet arthropathy, anxiety and depression. He consistently attributed these conditions to her repetitive work activities which he listed as bending, heavy lifting, twisting, stooping, reaching, turning, going up inclines, the May 2003 changing the tire on a work vehicle, driving over unpaved roads and getting into and out of a vehicle. Dr. Dorsey's description of appellant's duties is not disputed by the employing establishment and his opinion on how such duties caused or aggravated her lower back condition is otherwise uncontradicted by any substantial medical or factual evidence of record. While his reports do not offer a fully rationalized opinion or fully describe the mechanism of injury, he provided consistent opinions, based on examination findings and an accurate description of appellant's employment factors, to support appellant's claim of an employment-related low back condition.

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<sup>4</sup> *David Apgar*, 57 ECAB 137 (2005).

<sup>5</sup> *G.G.*, 58 ECAB 389 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>6</sup> *J.M.*, 58 ECAB 303 (2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>7</sup> *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard*, 53 ECAB 430 (2002); *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

Appellant also submitted reports from Dr. Park to establish her claim. Dr. Park diagnosed lumbar facet joint syndrome which has caused chronic back pain and lower extremity radiculopathy. He related in a March 7, 2007 report that appellant's back condition and constant pain was aggravated by walking or standing. In his February 15, 2008 report, Dr. Park related that an October 2007 MRI scan showed mild to moderately severe L5-S1 degenerative facet changes, a narrowing of L1-2 and a milder L1-2 posterior bulging of the annulus. He concluded that appellant was disabled from performing her usual duties as a postal carrier due her pain. The Board finds that the reports from Dr. Park are insufficient to establish appellant's claim. Nonetheless, the reports are consistent with Dr. Dorsey's reports and are supportive of appellant's allegation that she suffered a low back condition as a result of her employment. The fact that appellant's previous claims were not accepted by the Office does not preclude or prejudice any later claim supported by sufficient medical evidence. On remand the Office shall obtain a rationalized opinion from an appropriate physician as to whether appellant's current condition is caused by or aggravated by the employment factors.

On appeal appellant's counsel contends that Dr. Dorsey provides an unequivocal opinion establishing that her lower back condition was employment related and, thus, her claim should be accepted by the Office. While Dr. Dorsey's reports are not sufficient to establish appellant's claim, they do provide sufficient rationale to warrant further development by the Office as to whether she developed or aggravated a low back condition as a result of her employment duties.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 1, 2009 is set aside and the case is remanded for further development consistent with this decision.

Issued: December 7, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board